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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

NEMAN BROTHERS & ASSOCIATES,  
INC., a California Corporation,

Plaintiff,

vs.

TRIXXI CLOTHING COMPANY, INC.,  
individually and doing business as  
“THREE PINK HEARTS,” a California  
Corporation; BOSCOV’S  
DEPARTMENT STORES, a Delaware  
Limited Liability Company; KOHL’S  
DEPARTMENT STORES, a Wisconsin  
Corporation; J.C. PENNEY  
CORPORATION, INC., a Delaware  
Corporation; and DOES 1 through 10,  
  
Defendants.

Case No. 2:18-cv-07572-SJO-JEM

**DISCOVERY MATTER**

**STIPULATED**

**PROTECTIVE ORDER**

Original Complaint Filed:  
August 29, 2018

Honorable S. James Otero

Pursuant to Fed. R. Civ. P. 26(c), the parties to this lawsuit, through undersigned counsel, jointly submit this Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery or filed with the Court in this action:

1. Purpose and Limits of This Order and The Parties’ Good Cause Statement.

1.1 Good Cause Statement. Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. In particular, this action is likely to involve trade secrets, product and design development information, and commercial agreements (including those implicating third parties), and other valuable research, development, commercial, financial, and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among

other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and that there is good cause why it should not be part of the public record of this case.

## 1.2 Limitations of This Order.

1.2.1 This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles.

1.2.2 This Order does not supersede the Local Rules, and the parties are required to follow those Rules, the Court's Standing Order, and all other directives of this Court. In particular, as provided in Section 8, this Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5.1 and this Court's Standing Order if they seek to file anything under seal. As provided in Section 3, all

challenges to confidentiality designations shall proceed under L.R. 37-1 through L.R. 37-4.

1.2.3 This Order does not govern the use at trial of material designated under this Order.

## 2. Designated Material.

2.1 Information or material may be designated for confidential treatment pursuant to this Protective Order by any party, person or entity producing or lodging it in this action (the “Designating Party”), if: (a) produced or served, formally or informally, pursuant to the Federal Rules of Civil Procedure or in response to any other formal or informal discovery request in this action; and/or (b) filed or lodged with the Court. All such information and material and all information or material derived from it constitutes “Designated Material” under this Protective Order.

2.2 Unless and until otherwise ordered by the Court or agreed to in writing by the parties, all Designated Materials designated under this Protective Order shall be used by the parties and persons receiving such Designated Materials (“Receiving Party”) solely for litigation purposes, including any appellate proceeding relating thereto. Designated Material shall not be used by any party or person receiving them for any business or any other non-litigation purpose. No party or person shall disclose Designated Material to any other party or person not entitled to receive such Designated Material under the specific terms of this Protective Order. For purposes of this Protective Order, “disclose” or “disclosed” means to show, furnish, reveal or provide, indirectly or directly, any portion of the Designated Material or its contents, orally or in writing, including the original or any copy of the Designated Material.

## 3. Access to Designated Materials.

3.1 Materials Designated “CONFIDENTIAL”: Subject to the limitations set forth in this Protective Order, Designated Material may be marked

“CONFIDENTIAL” for the purpose of preventing the disclosure of information or materials that the designating party in good faith believes is confidential. Before designating any specific information or material “CONFIDENTIAL,” the Designating Party’s counsel shall make a good faith determination that the information warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure.

3.1.1 Materials designated “CONFIDENTIAL” may be disclosed only to the following Designees:

3.1.2 Persons who appear on the face of Designated Materials marked “CONFIDENTIAL” as an author, addressee, or recipient thereof;

3.1.3 Counsel retained as outside litigation attorneys of record in this action, and their respective associates, clerks, legal assistants, stenographic, videographic and support personnel, and other employees of such outside litigation attorneys, and organizations retained by such attorneys to provide litigation support services in this action and the employees of said organizations. “Counsel” explicitly excludes any in-house counsel whether or not they are attorneys of record in this action.

3.1.4 Consultants, including non-party experts and consultants retained or employed by Counsel to assist in the preparation of the case, to the extent they are reasonably necessary to render professional services in this action. Each consultant must sign a certification that he or she has read this Stipulated Protective Order, will abide by its provisions, and will submit to the jurisdiction of this Court regarding the enforcement of this Order’s provisions.

3.1.5 A party’s officers and/or employees, which may include in-house counsel.

3.1.6 The Court, its clerks, and secretaries, and any court reporter retained to record proceedings before the Court; and

3.1.7 Court reporters, videographers, and similar vendors retained

to transcribe or videotape the depositions.

3.2 Materials Designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”: Subject to the limitations in this Protective Order, Designated Materials may be marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for the purpose of preventing the disclosure of information or materials which, if disclosed to the receiving party, might cause competitive harm to the Designating Party. Information and material that may be subject to this protection includes, but is not limited to, technical and/or research and development data, intellectual property, financial, marketing and other sales data, and/or information having strategic commercial value pertaining to the Designating Party’s trade or business. Nothing in paragraph 2.1 above shall limit the information or material that can be designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this paragraph. Before designating any specific information “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Designating Party’s counsel shall make a good faith determination that the information warrants such protection.

3.2.1 Materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” materials may be disclosed only to the following Designees:

3.2.2 Persons who appear on the face of Designated Materials marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as an author, addressee, or recipient thereof;

3.2.3 Counsel for the parties to this action, as defined in section 3.1.3 above;

3.2.4 Consultants for the parties to this action, as defined in section 3.1.4 above; and

3.2.5 The Court, its clerks and secretaries, and any court reporter retained to record proceedings before the Court.

3.2.6 Court reporters, videographers, and similar vendors retained to transcribe or videotape depositions.

3.3 Legal Effect of Designation. The designation of any information or materials as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is intended solely to facilitate the conduct of this litigation. Neither such designation nor treatment in conformity with such designation shall be construed in any way as an admission or agreement by the Receiving Party that the Designated Materials constitute or contain any trade secret or confidential information. Except as provided in this Protective Order, the Receiving Party shall not be obligated to challenge the propriety of any designation, and a failure to do so shall not preclude a subsequent attack on the propriety of such designation.

3.4 Nothing herein in any way restricts the ability of the Receiving Party to use “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material produced to it in examining or cross-examining any employee or consultant of the Designating Party.

4. Certificates Concerning Designated Materials. Each Consultant as defined in section 3.1.4, to whom any Designated Materials will be disclosed shall, prior to disclosure of such material, execute the Agreement To Be Bound By Stipulated Protective Order in the form attached hereto as Exhibit A. Counsel who makes any disclosure of Designated Materials shall retain each executed Agreement To Be Bound By Stipulated Protective Order.

5. Use of Designated Materials by Designating Party. Nothing in this Protective Order shall limit a Designating Party’s use of its own information or materials, or prevent a Designating Party from disclosing its own information or materials to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Protective Order, so long as the disclosure is made

in a manner that is reasonably calculated to maintain the confidentiality of the information or materials.

6. Manner of Designating Written Materials.

6.1 Documents, discovery responses and other written materials shall be designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” whether in whole or in part, as follows.

The producing party shall designate materials by placing the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each page so designated prior to production.

6.2 A designation of “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as to any item, thing or object that cannot otherwise be categorized as a document, written discovery or other written materials shall be made: (1) by placing the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the thing, object or container within which it is stored; or (2) by specifically identifying, in writing, the item and the level of confidentiality designation, where such labeling is not feasible.

6.4 When a party wishes to designate as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” materials produced by someone other than the Designating Party (a “Producing Party”), such designation shall be made:

6.4.1 Within fifteen (15) business days from the date that the Designating Party receives copies of the materials from the producing or disclosing entity; and

6.4.2 By notice to all parties to this action and to the Producing Party, if such party is not a party to this action, identifying the materials to be designated with particularity (either by production numbers or by providing other adequate identification of the specific material). Such notice shall be sent

by U.S. mail or e-mail.

6.4.3. A party shall be permitted to designate as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material produced by a Producing Party only where:

a. The material being produced was provided to or developed by such Producing Party: (i) under a written confidentiality agreement with the Designating Party; or (ii) within a relationship with the Designating Party (or a party operating under the control thereof) in which confidentiality is imposed by law (including, but not limited, to the employment relationship and the vendor-customer relationship); and

b. The material being produced would be considered confidential material of the Designating Party under Section 3.1 of this Agreement if it were in the possession of the Designating Party.

6.5 Upon notice of designation, all persons receiving notice of the requested designation of materials shall:

6.5.1 Make no further disclosure of such Designated Material or information contained therein, except as allowed in this Protective Order;

6.5.2 Take reasonable steps to notify any persons known to have possession of or access to such Designated Materials of the effect of such designation under this Protective Order; and

6.5.3 If “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material or information contained therein is disclosed to any person other than those entitled to disclosure in the manner authorized by this Protective Order, the party responsible for the disclosure shall, immediately upon learning of such disclosure, inform the Designating Party in writing of all pertinent facts relating to such disclosure, and shall make every effort to prevent further disclosure by the unauthorized person(s).

7. Manner of Designating Deposition Testimony.



7.1 Deposition transcripts and portions thereof taken in this action may be designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the deposition or after, in which case the portion of the transcript containing Designated Material shall be identified in the transcript by the Court Reporter as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The designated testimony shall be bound in a separate volume and marked by the reporter accordingly.

7.2 Where testimony is designated during the deposition, the Designating Party shall have the right to exclude, at those portions of the deposition, all persons not authorized by the terms of this Protective Order to receive such Designated Material.

7.3 Within seven (7) days after a deposition transcript is certified by the court reporter, any party may designate pages of the transcript and/or its exhibits as Designated Material. During such seven (7) day period, the transcript in its entirety shall be treated as “CONFIDENTIAL” (except for those portions identified earlier as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” which shall be treated accordingly from the date of designation). If any party so designates such material, the parties shall provide written notice of such designation to all parties within the seven (7) day period. Designated Material within the deposition transcript or the exhibits thereto may be identified in writing by page and line, or by underlining and marking such portions “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and providing such marked-up portions to all counsel.

8. Copies. All complete or partial copies of a document that disclose Designated Materials shall be subject to the terms of this Protective Order.

9. Court Procedures.

9.1 Disclosure of Designated Material to Court Officials. Subject to the provisions of this section, Designated Material may be disclosed to the Court,

Court officials or employees involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master, referee, expert, technical advisor or Third-Party Consultant appointed by the Court), and to the jury in this action, and any interpreters interpreting on behalf of any party or deponent.

9.2 Filing Designated Materials with the Court. Nothing in this Order shall vary the requirements for filing under Seal imposed by the Federal Rules of Civil Procedure or the Local Rules of this Court. If a party wishes to file with the Court any document, transcript or thing containing information which has been designated “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” the Party shall designate the material as set forth herein and file it with the Court in an application for filing under seal under the Local Rules of this Court, with the material bearing the following or substantially similar legend:

**“[CONFIDENTIAL, or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY] INFORMATION SUBJECT TO PROTECTIVE ORDER.”**

The Application for Filing under Seal must show good cause for the under seal filing. Filing the document under seal shall not bar any party from unrestricted use or dissemination of those portions of the document that do not contain material designated “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If a filing party fails to designate information as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” any party who in good faith believes that designation and filing under seal is required by this Protective Order may move the Court to file said information under seal within five (5) days of learning of the defective filing. Notice of such designation shall be given to all parties. Nothing in this provision relieves a party of liability for damages caused by failure to properly file Designated Material under seal.

9.3 In the event that the Court refuses to allow any document to be filed under seal, despite the Receiving Party's compliance with Section 8.2, the Federal Rules of Civil Procedure and Local Rules of this Court, the Receiving Party may, nonetheless, file such documents with the Court as part of the public record unless the Designating Party seeks reconsideration of the refusal within four days of the denial, or otherwise as otherwise instructed by the Court.

9.4 Retrieval of Designated Materials. The party responsible for lodging or filing the Designated Materials shall be responsible for retrieving such Designated Materials from the Court following the final termination of the action (including after any appeals).

10. Objections.

10.1 A party may challenge any designation under this Protective Order at any time on the grounds that the information or material do not meet the standards of Section 1 by following the procedure of L.R. 37 of this Court.

10.2 The parties shall meet and confer in good faith prior to the filing of any motion under this section.

11. Client Communication. Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course of rendering such advice, relying upon the examination of Designated Material. In rendering such advice and otherwise communicating with the client, however, counsel shall not disclose any Designated Material, except as otherwise permitted by this Protective Order.

12. No Prejudice.

12.1 This Protective Order shall not diminish any existing obligation or right with respect to Designated Material, nor shall it prevent a disclosure to which the Designating Party consented in writing before the disclosure takes place.

12.2 Unless the parties stipulate otherwise, evidence of the existence or

nonexistence of a designation under this Protective Order shall not be admissible for any purpose during any proceeding on the merits of this action.

12.3 If any party required to produce documents contends that it inadvertently produced any Designated Material without marking it with the appropriate legend, or inadvertently produced any Designated Material with an incorrect legend, the producing party may give written notice to the receiving party or parties, including appropriately stamped substitute copies of the Designated Material. Within three (3) business days of receipt of the substitute copies, the receiving party shall return the previously unmarked or mismarked items and all copies thereof.

12.4 Neither the provisions of this Protective Order, nor the filing of any material under seal, shall prevent the use in open court, in deposition, at any hearing, or at trial of this case of any material that is subject to this Protective Order or filed under seal pursuant to its provisions. At deposition, the party using Designated Material must request that the portion of the proceeding where use is made be conducted so as to exclude persons not qualified to receive such Designated Material. All confidentiality designations or legends placed pursuant to this Stipulated Protective Order shall be removed from any document or thing used as a trial exhibit in this case. The removal of such confidentiality designations or legends under the preceding sentence shall not affect the treatment of such documents and things as Designated Material under this Stipulated Protective Order. Upon request of a party, the parties shall meet and confer concerning the use and protection of Designated Material in open court at any hearing. Prior to the pretrial conference, the parties shall meet and confer concerning appropriate methods for dealing with Designated Material at trial.

12.5 Any inadvertent production of documents containing privileged information shall not be deemed to be a waiver of the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrines. All parties

specifically reserve the right to demand the return of any privileged documents that it may produce inadvertently during discovery if the producing party determines that such documents contain privileged information. After receiving notice of such inadvertent production by the producing party, the receiving party agrees to make reasonable and good faith efforts to locate and return to the producing party all such inadvertently produced documents.

### 13. Modification and Survival.

13.1 Modification. The Order shall be subject to modification by the Court on its own initiative, or on Motion of a party or any other person with standing. Accordingly, the parties reserve the right to seek modification of this Protective Order at any time for good cause. The parties agree to meet and confer prior to seeking to modify this Protective Order for any reason. The restrictions imposed by this Protective Order may only be modified or terminated by written stipulation of all parties or by order of this Court. Parties entering into this Protective Order will not be deemed to have waived any of their rights to seek later amendment to this Protective Order.

13.2 Trial. The parties understand that this Protective Order does not extend to material presented at the trial of this Action. Once the case proceeds to trial, any information that is presented on the record during trial, whether or not designated as confidential and/or kept and maintained pursuant to the terms of this Protective Order, will be presumptively available to all members of the public, including the press, unless good cause is shown to the district judge in advance of the presentation of that material at trial to proceed otherwise. However, any documents or things that have been designated as confidential do not lose their protected character simply by virtue of having been presented as an exhibit at trial.

13.3 Survival and Return of Designated Material. This Protective Order shall survive termination of this action prior to trial of this action. Upon

final termination of the action prior to trial of this action, and at the written request of the Designating Party, all Designated Material, including deposition testimony, and all copies thereof, shall be returned to counsel for the Designating Party (at the expense of the Designating Party) or (at the option and expense of the requesting party) shall be destroyed. Upon request for the return or destruction of Designated Materials, counsel shall certify their compliance with this provision and shall serve such certification to counsel for the Designating Party not more than ninety (90) days after the written request to return or destroy Designated Materials. Counsel who have submitted one or more Certificate(s) prepared pursuant to Section 3 do not need to retain such Certificate(s) past the ninety (90) day period.

14. Court's Retention of Jurisdiction. The Court retains jurisdiction after final termination of the action prior to trial, to enforce this Stipulation.

15. Exception for Public Information. Nothing in this Stipulation shall be deemed in any way to restrict the use of documents or information which are lawfully obtained or publicly available to a party independently of discovery in this action, whether or not the same material has been obtained during the course of discovery in the action and whether or not such documents or information have been designated hereunder. However, in the event of a dispute regarding such independent acquisition, a party wishing to use any independently acquired documents or information shall bear the burden of proving independent acquisition.

16. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information or Attorneys' Eyes Only Information by counsel or the parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise

until such time as the Court may rule on a specific document or issue.

17. No Admission. The designation by a producing Party of Confidential Information or Attorneys Eyes Only Information is intended solely to facilitate the preparation and trial of this action. Such designation is not an admission by any Party that the designated disclosure constitutes or contains any Confidential Information or Attorneys Eyes Only Information. Disclosure of Confidential Information or Attorneys Eyes Only Information is not a waiver of any right of the producing Party to object to admissibility.

18. Miscellaneous.

18.1 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any of the material covered by this Order. Moreover, this Order shall not preclude or limit any Party's right to seek further and additional protection against or limitation upon production of documents produced in response to discovery.

18.2 Other Privileges. Nothing in this Order shall require disclosure of materials that a Party contends are protected from disclosure by the attorney-client privilege or the attorney work-product doctrine. This provision shall not, however, be construed to preclude any Party from moving the Court for an order directing the disclosure of such materials where it disputes the claim of attorney-client privilege or attorney work-product doctrine.

18.3 Self-Disclosure. Nothing in this Order shall affect the right of the Designating Party to disclose the Designating Party's own Confidential information or items to any person or entity. Such disclosure shall not waive any of the protections of this Order.

18.4 Captions. The captions of paragraphs contained in this Order are for

reference only and are not to be construed in any way as a part of this Order.  
IT IS SO ORDERED.

DATED: January 15, 2019

/s/ - John E. McDermott  
Honorable John E. McDermott  
United States Magistrate Judge



# EXHIBIT A

## UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

NEMAN BROTHERS & ASSOCIATES,  
INC., a California Corporation,

Plaintiff,

vs.

TRIXXI CLOTHING COMPANY, INC.,  
individually and doing business as  
“THREE PINK HEARTS,” a California  
Corporation; BOSCOV’S  
DEPARTMENT STORES, a Delaware  
Limited Liability Company; KOHL’S  
DEPARTMENT STORES, a Wisconsin  
Corporation; J.C. PENNEY  
CORPORATION, INC., a Delaware  
Corporation; and DOES 1 through 10,

Defendants.

Case No. 2:18-cv-07572-SJO-JEM

### AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

Original Complaint Filed:  
August 29, 2018

Honorable S. James Otero

The undersigned hereby acknowledges and certifies that he/she has received and read a copy of the Stipulated Protective Order entered in the above-captioned action on January \_\_, 2019, and that he/she understands the terms thereof and agrees to be bound thereby. The undersigned further agrees to submit to the jurisdiction of this Court and understands that the Court may impose sanctions for any violation of the Stipulated Protective Order. The undersigned designates the following as their agent for receipt of service of process for any action taken under this Stipulated Protective Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature